

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT KNOXVILLE

February 7, 2003 Session

PATSY A. HOLCOMB v. MEMORIAL HEALTHCARE SYSTEMS, INC.

**Direct Appeal from the Chancery Court for Hamilton County
No. 00-0468 W. Frank Brown III, Chancellor**

April 21, 2003

No. E2002-01226-WC-R3-CV

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tenn. Code Ann. § 50-6-225(e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law. The trial court awarded the employee 60 percent permanent partial disability to her right leg. The employer contends the award of disability is excessive. The judgment is affirmed.

Tenn. Code Ann. § 50-6-225(e) (1999) Appeal as of Right; Judgment of the Chancery Court is Affirmed.

THAYER, SP. J., delivered the opinion of the court, in which ANDERSON, J., and BYERS, SR. J., joined.

James T. Williams and Lynda Motes Hill, of Chattanooga, Tennessee, for Appellant, Memorial Healthcare Systems, Inc.

Harry Weill, of Chattanooga, Tennessee, for Appellee, Patsy A Holcomb.

MEMORANDUM OPINION

The employer, Memorial Healthcare Systems, Inc., has appealed from the trial court's ruling awarding the employee, Patsy A. Holcomb, 60 percent permanent partial disability to her right leg.

Facts

The employee, age fifty-two years, was employed at the defendant's hospital as a registered nurse with duties in the operating room as a circulating nurse. On May 11, 1999, she fell while working in the heart room and landed on her right knee, elbow and shoulder. Within a few days, she came under the care of Dr. Ballard who performed an arthroscopy procedure on her knee. She was off work about three weeks and upon returning was assigned to light duties involving paperwork.

At the time of the trial below, she was working in the pretesting or pre-admission office. She testified that she was not able to return to work as a surgical nurse because she could not stand for long periods of time and because of other restrictions. She said she could not go up and down steps good and could not do her yard work anymore. She had been advised that she needs knee replacement surgery but she has not had that surgery because she is fearful of “too many things that can go wrong” and also because it would be something that would have to be repeated within five to twelve years.

Dr. William T. Ballard, an orthopedic surgeon, testified by deposition and stated he performed an arthroscopy on her knee on May 14, 1999, which involved removing torn cartilage. His diagnosis was partial torn medial meniscus. He felt she reached her maximum medical improvement on about September 15, 1999 and said she should not be squatting or standing longer than ten (10) minutes an hour; that she should not climb more than five (5) steps at a time; that she had medium degenerative changes in her knee and the accident had aggravated this condition; and that she probably needed knee replacement surgery. He gave her a 2 percent medical impairment to her right leg.

Dr. Edward D. Johnson, a general practitioner, appeared at the trial and testified and his deposition was also filed in evidence. He saw the employee on April 5, 2001 and examined Dr. Ballard’s records. He stated that if the patient’s knee joint had basically stabilized after surgery, she would have a fairly normal joint and her impairment to the leg would be 2 percent. He was of the opinion her condition and impairment was not in that category. He said the tear had caused the knee joint to become unstable and the ligament was lax and not supported. The doctor indicated this condition caused abnormal motion in the knee joint and that her whole knee was deteriorating and would continue to get worse. He stated she needed a knee replacement and feared having it. He said her impairment was 20 percent to her leg and at a later point said it could be as high as 40-50 percent. He did not agree with Dr. Ballard that she had arthritis in the knee.

Dr. Diana Boyd, a certified independent medical examiner specializing in occupation medicine, testified by deposition and said she examined the employee on January 8, 2002 and reviewed the various reports of other doctors. She agreed with the 2 percent impairment rating but was of the opinion the injury did not aggravate her pre-existing degenerative joint disease.

Dr. Sai H. Oh, a certified medical examiner, saw the employee on February 4, 2002 and again at a later date. On the first visit, she felt the medical impairment was about 10 percent to the leg but on the second visit, she estimated the impairment at 20 percent due to abnormal motion of her knee.

Standard of Review

_____The review of the appeal is *de novo* accompanied by a presumption that the findings of the trial court are correct unless we find the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2).

Analysis

The employer contends the 60 percent award of disability to the right leg is excessive. In this connection, it is argued the trial court did not consider all of the pertinent facts in arriving at an award of disability and that the award is thirty times the impairment of 2 percent.

The extent of vocational disability is a question of fact to be determined from all of the evidence, including lay and expert testimony. *Nelson v. Wal-Mart Stores, Inc.*, 8 S.W.3d 625, 629 (Tenn. 1999). When fixing disability to a scheduled member, the main question is to ascertain the loss of use of that member. *Duncan v. Boeing Tennessee, Inc.*, 825 S.W.2d 416 (Tenn. 1992). In this connection, the usual factors of the employee's age, education, training and skills, experience, and opportunity for employment in the open labor market may also be considered. *Orman v. Williams-Sonoma, Inc.*, 803 S.W.2d 672, 678 (Tenn. 1991).

In the present case, two doctors found the impairment to the leg to be 2 percent and two doctors found impairment to be 20 percent or higher. The trial court accepted the evidence finding the medical impairment to be 2 percent. Anatomical impairment is but one factor to be considered in determining the extent of vocational disability. *George v. Building Materials Corp.*, 44 S.W.3d 481 (Tenn. 2001). Therefore, in fixing an award of disability or in reviewing a claim of excessiveness of an award, one factor cannot be singled out alone to determine the issue. Impairment and vocational disability are separate and distinct findings.

From our independent review of the evidence, we cannot say the evidence preponderates against the award of 60 percent disability to the right leg.

Conclusion

The award of 60 percent permanent partial disability to the right leg is affirmed in all respects. Costs of the appeal are taxed to the employer.

ROGER E. THAYER, SPECIAL JUDGE

IN THE SUPREME COURT OF TENNESSEE
AT KNOXVILLE, TENNESSEE

PATSY A. HOLCOMB V. MEMORIAL HEALTHCARE SYSTEMS, INC.
Hamilton County Chancery Court
No. 00-0468

April 21, 2003

No. E2002- 01226-WC-R3-CV

JUDGMENT

This case is before the Court upon the entire record, including the order of referral to the Special Workers' Compensation Appeals Panel, and the Panel's memorandum Opinion setting forth its findings of fact and conclusions of law, which are incorporated herein by reference;

Whereupon, it appears to the Court that the memorandum Opinion of the Panel should be accepted and approved; and

It is, therefore, ordered that the Panel's findings of facts and conclusions of law are adopted and affirmed and the decision of the Panel is made the Judgment of the Court.

The costs on appeal are taxed to the employer, Memorial Healthcare Systems, Inc., for which execution may issue if necessary.